

Appl. No.: 10/769,031
Amdt. dated June 8, 2006
Reply to Office Action of March 9, 2006

Amendments to the Drawings:

There are no amendments to the drawings at this time.

Appl. No.: 10/769,031
Amdt. dated June 8, 2006
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Remarks/Arguments

Reconsideration of the application as amended is respectfully requested.

Before entry of the present amendment, Claims 1-15 were pending. In accordance with the amendments provided herewith, Claims 1-15 remain pending and are considered allowable and patentably distinct over the prior art cited. In addition, New Claims 16-27 have been added, and for the reasons provided below, are also considered allowable and patentably distinct over the prior art cited.

In undertaking a determination of whether a reference, or a combination of references, renders a claim(s) obvious under 35 U.S.C. § 103(a), the examiner must show that the reference or combination of references teach or suggest every element of the claim(s) in question. MPEP § 706.02(j).

The combination of Vandenberg et al. and Wechter is cited as disclosing, claiming, teaching or suggesting every element of Claims 1-15, and in particular, independent Claims 1 and 8, respectively. However, for the reasons set forth below, the combination of Vandenberg et al. and Wechter fail to disclose, claim, teach or suggest every element of Claims 1 and 8, respectively, and the respective claims depending from the base claims.

Appl. No.: 10/769,031
Amdt. dated June 8, 2006
Reply to Office Action of March 9, 2006

With regard to Claim 1, the following subject matter is recited (quoted for convenience):

1. A stringed musical instrument comprising:
 - a) a hollow body comprised of a contoured front face, a contoured back face oriented generally opposite said contoured front face, and a continuous side member extending around and between said front and back faces to form a hollow body;
 - b) an elongated neck extending from one end of said hollow body terminating in a headstock;
 - c) a sound aperture oriented in the central region of said contoured front face; and
 - d) a plurality of strings tautly oriented across said contoured front face and said sound aperture and anchored at the end of said headstock.

Vandenberg et al. is cited as disclosing a stringed musical instrument (a guitar) comprising a hollow body having a contoured front face and a contoured back face. However, Vandenberg et al. is a design patent disclosing and claiming the ornamental aspects of a guitar body that fails to disclose or claim a hollow body.

For illustrative purposes, the figures from the Vandenberg et al. design patent have been reproduced and appended (as "Attachment A") to include reference characters that will be referred to below to demonstrate the applicant's arguments. In FIG. 1, the body is labeled as (10). The body (10) includes a front pickup position (12), a rear pickup position (14) and a bridge position (16). As depicted in appended FIG. 1 and appended FIG. 6, the bridge position (16) includes an opening or aperture (16a) through which a tremelo unit passes, and particularly a tremelo block, and further includes a spring cavity (16b) that houses the springs necessary to place the tremelo into position for tensioning (the springs attached to the body within the recess and to the tremelo block at the other end

Appl. No.: 10/769,031
Amdt. dated June 8, 2006
Reply to Office Action of March 9, 2006

of the springs). The body (10) includes a plurality of controls (18), generally utilized for controlling the volume, the tonal characteristics, and the pick-up selection (among pickups at positions (12) and (14)). Finally, as depicted in FIG. 2 and FIG. 5, the body (10) includes an amplifier plug element (20) for receiving and holding a male plug of an amplifier cable coupling the guitar to an amplifier.

Significantly, Vandenberg et al. fails to disclose a sound hole or aperture through which a hollow body guitar generally transmits sound. This is significant because a hollow body guitar requires at least one hole or aperture for transmitting the sound generated within the body of the guitar. Failure to disclose a sound hole indicates that the body of the guitar is not a hollow body, and instead indicates that the body is of solid body construction.

As is evident from inspecting FIG. 1 and FIG. 6, the guitar disclosed in Vandenberg et al. fails to disclose an element that provides or may function as a sound hole necessary for a hollow body guitar, and the visual and anecdotal evidence suggests that the disclosure provided in Vandenberg et al. describes a solid-body electric guitar. As is indicated by the description of the Vandenberg et al. figures, the body (10) has two pickup positions (12 and 14) for housing electric pickups, and a bridge position (16) housing a tremelo unit. The only openings on the guitar body (10) are the opening or aperture (16a) and the element (20), neither of which are a sound hole. The opening or aperture (16a) is not a sound hole and cannot operate as a sound hole since the tremelo sets within the aperture (16a) for attachment of the tensioning springs on the underside and within the spring cavity (16b) (see FIG. 6). Element (20) is for receiving the male plug element of an amplifier cable. Thus, the disclosure of

Appl. No.: 10/769,031
Amdt. dated June 8, 2006
Reply to Office Action of March 9, 2006

Vandenberg et al. fails to disclose, claim, teach or suggest a sound hole, and therefore, fails to disclose, claim, teach or suggest a hollow body as recited in Claim 1 of the present invention.

As such, the combination of Vandenberg et al. and Wechter fails to disclose, claim, teach or suggest every element of Claim 1. Therefore, Claim 1 is patentably distinct over Vandenberg et al. and Wechter. Claims 2-7 are also patentably distinct over the prior art cited as depending from a patentably distinct independent claim. Withdrawal of this rejection is respectfully requested.

In addition to the evidence and arguments presented above, the applicant wishes to supplement the record with additional submissions (labeled as "Attachment B" and "Attachment C", respectively) supporting the assertions offered. These additional submissions are intended to demonstrate that the Vandenberg et al. reference, from which the original Vandenberg Signature Model and the later V-Type guitar (both made by Peavey) are based, discloses a solid-body guitar without a sound hole, and not a hollow body guitar as claimed in the present application.

"Attachment B" is a "Guitar Player" magazine review of the V-Type NTB Limited Edition guitar manufactured and sold by Peavey (a copy of the article may be found at www.guitarplayer.com/story.asp?storyCode=4310). The V-Type guitar is an updated version of the original Vandenberg Signature Model manufactured and sold by Peavey from 1988-1992, and named for the co-inventor of the design patent referenced in the office action, Adrian Vandenberg (then guitarist for Whitesnake). The photos in the article are virtually identical to the figures provided in the design patent reference.

Appl. No.: 10/769,031
Amdt. dated June 8, 2006
Reply to Office Action of March 9, 2006

"Attachment C" is a "Guitar World" magazine review of the V-Type NTB guitar manufactured and sold by Peavey (a PDF copy of the article may be found at www.peavey.com/media/pdf/reviews/GuitarWorld_vtype.pdf). The article includes enlarged photos of two models of the V-Type guitar, which are virtually identical to the figures provided in the design patent reference.

Therefore, and in combination, the arguments and evidence presented, including "Attachment B" and "Attachment C", demonstrate that the Vandenberg et al. reference discloses and claims a solid body guitar, and thus, fails to disclose the hollow body guitar claimed by the present invention in Claim

1. For the foregoing reasons, withdrawal of the rejection related to Claims 1-7 is respectfully requested.

With regard to Claim 8, as amended, the following subject matter is recited (quoted for convenience - amended additions underlined):

8. A stringed instrument comprising:
- (a) a body, having a front side and a back side;
 - (b) a neck, extending from said body;
 - (c) strings extending across said front side of said body; wherein
 - (d) at least a portion of either said front side or said back side is contoured, and wherein said body is contoured on its front side at the end where said neck extends from said body. said body contoured from the central area to the bottom edge toward a person holding said string instrument.

Claim 8 recites a stringed instrument comprising a body, a neck, strings, and contours on the front and back sides of the body, and a front side contour at the end of the body where the neck extends from

Appl. No.: 10/769,031
Amdt. dated June 8, 2006
Reply to Office Action of March 9, 2006

the body, with the contour from the central area to the bottom edge toward the person holding the instrument. As is described in the specification, the contour "reduces the width of the body and allows a person to more easily reach the difficult frets closer to the sound hole." (See Fig. 2 and Page 9, Lines 200-202). Neither Vandenberg et al. nor Wechter disclose, claim, teach or suggest a contour along the front side of the body and on the end where the neck extends from the body. Furthermore, neither Vandenberg et al. nor Wechter disclose, claim, teach or suggest a contour in this position in which the contour "runs" from the central area to the bottom edge toward the person holding the instrument. As such, the combination of Vandenberg et al. and Wechter fail to disclose every element of Claim 8, as amended. Therefore, Claim 8, and Claims 9-12, 14 and 15 depending from Claim 8, are patentably distinct over the prior art cited. Withdrawal of this rejection is respectfully requested.

The applicant wishes to point out that it is well established at law that for a proper *prima facie* rejection of a claimed invention based upon obviousness under 35 U.S.C. § 103(a), the cited references must disclose, claim, teach or suggest every element of the claimed invention. Further, if a combination is cited in support of a rejection, there must be some affirmative teaching in the prior art to make the proposed combination. See Orthopedic Equipment Company, Inc. et al. v. United States, 217 USPQ 193, 199 (Fed. Cir. 1983), wherein the Federal Circuit decreed, "Monday Morning Quarter Backing is quite improper when resolving the question of obviousness." Also, when determining the scope of teaching of a prior art reference, the Federal Circuit has declared:

Appl. No.: 10/769,031
Amdt. dated June 8, 2006
Reply to Office Action of March 9, 2006

"[t]he mere fact that the prior art could be so modified should not have made the modification obvious unless the prior art suggested the desirability of the modification." (Emphasis added). In re Gordon, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

There is no suggestion as to the desirability of any modification of the references to describe the present invention. An analysis of the disclosures within the cited references fails to cite every element of the claimed invention. There is nothing in the prior art or the Examiners arguments that would suggest the desirability or obviousness of making the present invention embodied in the various claims submitted in this response. Uniroyal, Inc. v. Rudkki-Wiley Corp., 837 F.2d 1044, 5 USPQ 2d 1432 (Fed. Cir. 1988).

New Claims 16-26 have been added, and Claims 16-26 are patentably distinct over the prior art cited. With regard to Claim 16, the following subject matter is recited (quoting for convenience):

16. A stringed instrument comprising:
 - a body and a neck extending from said body;
 - said body comprising a front side and a back side, said front side comprising a strumming contour and a fretting contour; and
 - a plurality of strings extending across the body and along the neck.

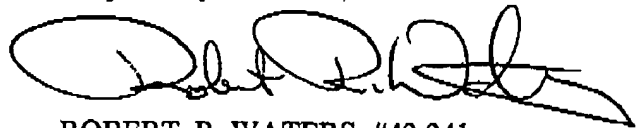
Claim 16 recites a stringed instrument comprising a body, the body comprising a front side and a back side, the front side comprising a strumming contour and a fretting contour. The strumming contour is depicted in Fig. 1, Fig. 3 and Fig. 7 along the front side adjacent the tail of the body, and corresponds to placement of the strumming arm along the strumming contour (see Fig. 7 specifically for detail). The fretting contour is depicted in Fig. 1, Fig. 2 and Fig. 6 along the front side adjacent the head of the body (the end the neck attaches to the body), and corresponds to allowing a player to move the fret hand

Appl. No.: 10/769,031
Amdt. dated June 8, 2006
Reply to Office Action of March 9, 2006

and arm into a more comfortable position for accessing the higher register frets (i.e. the frets proximal to the body). The prior art cited fails to disclose a body having a front side comprising a strumming contour and a fretting contour as described and claimed in Claim 16. As such, Claim 16, and its dependent Claims 17-26, are patentably distinct over the prior art.

Therefore, in view of foregoing amendments and clarifications, the applicant submits that allowance of the present application and all remaining claims, as amended, is in order and a formal Notice of Allowance is respectfully requested at the earliest possible date.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Robert R. Waters', with a stylized, flowing script.

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U.S. Patent

Feb. 19, 1991

Sheet 2 of 3

Des. 314,783

ATTACHMENT A
Pg. 2 OF 3

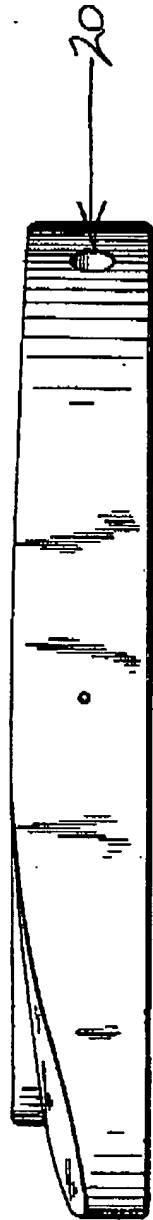


FIG. 2



FIG. 3

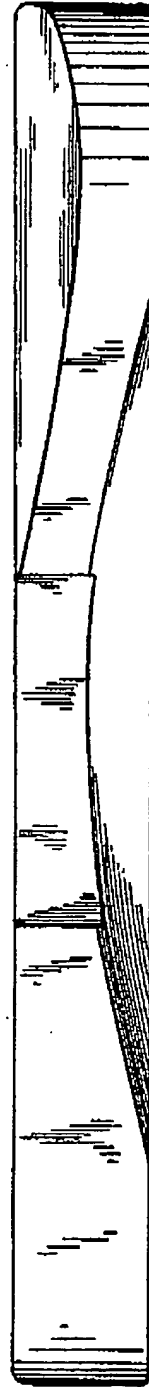


FIG. 4



FIG. 5

U.S. Patent

Feb. 19, 1991

Sheet 3 of 3

Des. 314,783

ATTACHMENT A
Pg. 3 of 3

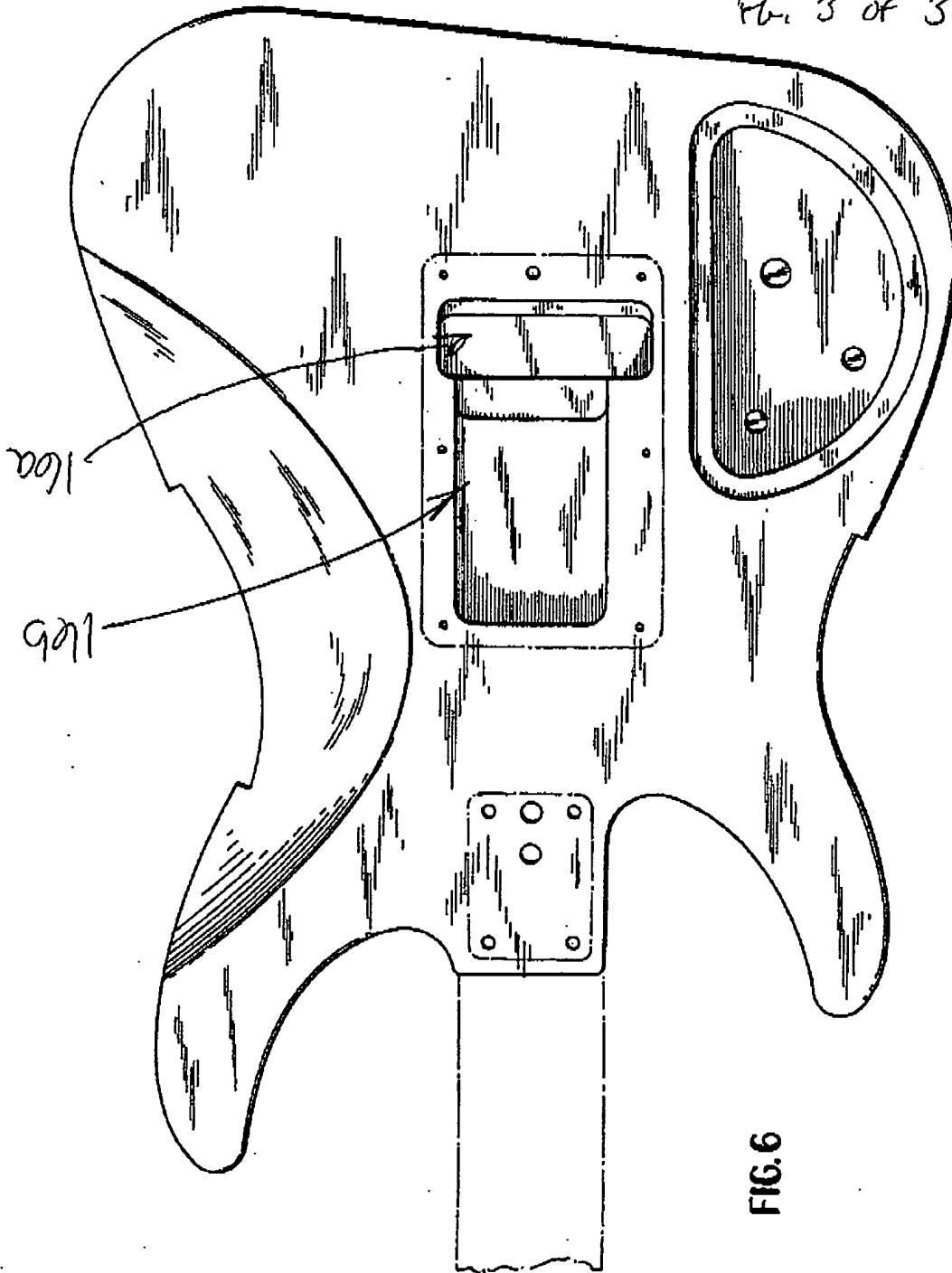


FIG. 6

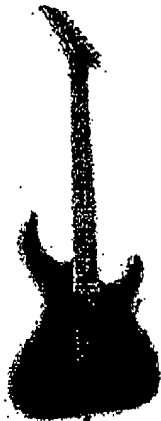
ATTACHMENT B

Pg. 1 OF 2

Peavey V-Type NTB Limited Edition

September 2003

By Michael Molenda



Dutch shredder and hair god Adrian Vandenberg burned it up with Whitesnake in the metal-licious '80s, and is currently rumor fodder since fading out of the spotlight after a 1997 Whitesnake reunion. (Did he break his neck in a car accident and can no longer play? Is he producing an all-girl band with former Golden Earring vocalist Barry Hay? Is he reforming the original Vandenberg group?) But whether Vandenberg returns to the rock arena or not, he did leave us one damn fine guitar.

Developed with Peavey in 1988, and produced until the early '90s, the original Vandenberg guitars were edgy (dug the distinctive "violin cuts" in the torso) and chock full of attitude. And the guitar remains a bona fide cult icon, as a healthy group of Web-based Vandenberg aficionados still buy, trade, and collect various incarnations (at prices ranging from \$125 to \$1,300 or more).

If you're starting to get a sense of *déjàgrave*; vu, don't fear an acid flashback—the new Peavey V-Type NTB Limited Edition is, in fact, a stellar updating of the classic Vandenberg. The models reviewed here—the standard, fixed bridge ST (\$699 retail) and the tremolo bearing TR (\$849 retail)—are fantastic examples of workmanship, design, playability, and power. The Vandenberg name may no longer be a selling point (hence the "V-Type" moniker), but these striking devils can still rage all over old-school metal and hard rock music.



The Look

As design elements, the violin cuts may be small things, but they certainly kick this double-cutaway silhouette into its own fashion stratosphere. The shape is a fabulous statement on its own, but add the reverse headstock and the Limited Edition's flawless abalone inlays, and you have an ornate, old jazz box' vibe mingling with stark, post-modern functionality. The result is a really great look, and it immediately announces that the owner is somewhat, well, *dangerous*. Strap this baby on at your own risk!

The workmanship on the Korean-made V-Type is absolutely stunning. It's almost custom-shop precise—and that's no lie. The finish is perfect, the hardware is locked down and well fitted, the jumbo frets are smooth and nicely dressed, and even the routing under the pickup bezels is spotless.

The Feel

While the V-Type doesn't offer the flat, burning fast neck of, say, an Ibanez JEM, the neck's wide, gently rounded profile will delight vintage buffs. The polished frets and low action do invite rapid-fire note spurts, but the neck's heft also accommodates aggressive riffing and chord work. The smooth, ergonomic neck joint allows access to the 24th fret, and everything else about the V-Type feels comfy. (Although those who aren't used to reverse headstocks may have a slight huff managing the tuners.) An added bonus are the ridged, rubber volume and tone knobs, which are ideal for pinky manipulations. The Floyd Rose-licensed tremolo on the TR model is responsive and smooth, although heavy pull-offs and manic dive-bombing will bring on a fair amount of "trem gargle."

The Sound

A bit of the '80s still resides in the V-Type's demeanor, as it favors old-school heaviness over the saturated textures of modern metal. The pickups are voiced to deliver hyped, but not overly aggressive mids. This results in excellent note articulation, and a full-on bridge-pickup tone that's tough without being shrill. Clean timbres can sound a tad hollow, but the very musical tone control is capable of dialling in a rounder snap—and its sweep is also wide enough for producing wah-like effects. Turning on the burn gives up an overdrive personality that can evoke everything from AC/DC to the Who to, dare I say, Whitesnake. There's nothing idiosyncratic about the V-Type's tones—and the medium-output pickups won't drive an amp into spasms of saturation—but it's a

glorious rock machine that pays homage to all the magnificent guitar sounds of the '70s and '80s.

V is for Victory

The V-Type offers a unique design, wonderful inlay work, and classic sounds, and the value proposition is pretty major. Whether you choose the ST or the TR model, you're going to get one mean rock and roll animal—and that's why the V-Type wins an **Editors' Pick Award**.

ATTACHMENT B

Pg. 2 OF 2

PEAVEY V-TYPE NTB LIMITED EDITION

- 15/8" nut width
- 243/4"-scale rosewood- on-maple set neck
- Alder body
- 24 jumbo frets
- Reverse headstock
- Peavey ceramic humbuckers
- Master volume and tone controls
- 3-way pickup selector
- Tune-o-matic-style bridge (ST) or Floyd Rose-licensed tremolo (TR) with locking nut
- Abalone inlay
- 7.02 lbs (ST); 7.52 lbs (TR)

PROS AND CONS

Pros Futuristic look. Classic tone. Impeccable workmanship.

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Contact Info Peavey Electronics, (601) 483-5365; peavey.com.

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TESTING 1...2...3...

THE GEAR IN REVIEW

ATTACHMENT C

Pg. 1 OF 2

SUMMER HEAT

Peavey V-Type EXP Series guitars

By Eric Kirkland

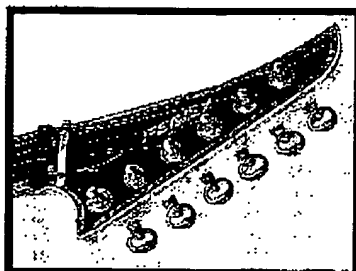
FEW "HAIR BANDS" were bigger than Whitesnake during the late Eighties. Armed with a crowd-pleasing stage act and a set list that got Bics flicking in arenas everywhere, the band enjoyed a level of commercial success enjoyed by few of its peers.

The signature six-string Peavey built for Adrian Vandenburg, the band's lead guitarist, nearly achieved cult status among fans of the company's offerings. This ax now stands as one of the most memorable, extreme designs Peavey ever produced. And now it's back, with a twist.

The new V-Type EXP Series guitars from Peavey expand generously on the Vandenburg's historic foundation, melding modern Hollywood flash with hard-hitting metal tones. And to solidify its metamorphosis, hardcore metal players from Lamb of God's Willie Adler to Haste's Nick Brunson have adopted the new V-Type with the same fervor as the hardcore mainstay 5150 amp.

Shared Features

Describing these remarkably bold, visual V-Type guitars as "eye catching" would be a



gross understatement. The stepped waist and cocked hips of their voluptuous alder bodies are just plain sexy, and the long horns add suggestive length to their form. But it's the thick green abalone inlays that make these guitars pop under the light. Adorning each guitar's body, neck and headstock, this sparkling shell job adds an exciting aura to an already shapely design.

At the core of the V-Type guitars' energy wave is a 24 3/4-inch-scale maple neck, built with true neck-through construction. (A reminder: this means the neck is part of a heavy board of bright maple, which actually makes up the center of the body.) There are obvious benefits to a neck that's an extension of the body rather than a separate component. These include a seamless contour at the "heel" and guaranteed resonance.

The rosewood fretboard, bound in faux ivory beneath the abalone accent, is inset with 24 massive Dunlop 6100 frets. There are no position markers, but a mother-of-pearl "limited-edition" inlay divides the two octaves at the 12th fret. The neck's profile is fairly deep, and it's well rounded to the fretboard's edge. Speed addicts might find it chunkier than what they're accustomed to, but the extra meat makes achieving the heavy sounds of these V-Type axes possible.

The stability of the dual-expansion truss rod lets you set the neck flat or dial in

precise amounts of relief. The trademark reverse headstock, meanwhile, is pitched back at 13 degrees for low string tension. And on the subject of the headstock, take note of the "skeleton key" tuners, which save weight and are easier to grip and turn than standard versions. Beefy, high-output ceramic-based humbuckers generate the power for these V-Types. A three-way toggle selects the pickups, and ribbed master knobs control volume and tone.

V-Type NTB ST Pearl White

My test ST (string-through) V-Type arrived glazed in Pearl White polyester and adorned with satin gold hardware. The ST's

THE FINE PRINT

MODEL	V-Type EXP Series NTB ST	V-Type EXP Series NTB TR
LIST PRICE	\$769.00	\$899.99
BODY	Alder	Alder
NECK/FRETBOARD	Maple (neck-through)/rosewood	Maple (neck-through)/rosewood
NUT	1.65 inches	1.65 inches
NECK PROFILE	Deep rounded	Deep rounded
RADIUS	12 inches	12 inches
SCALE	24 3/4 inches	24 3/4 inches
FRETS	24 Dunlop 6100	24 Dunlop 6100
PICKUPS	Ceramic humbuckers	Ceramic humbuckers
CONTROLS	Master volume and tone, three-way toggle switch	Master volume and tone, three-way toggle switch
FINISHES	Pearl White, Black, Transparent Purple	Pearl White, Black, Transparent Purple

ATTACHMENT C
 Ph. 2 of 2

strings are fed through the body and over an adjustable Tune-O-Matic bridge. Why choose the ST? Non-trem guitars are easier to maintain and tune, and they're typically louder and richer in acoustic tone.

After trying the guitar with several amplifiers, I determined that the best match for this V-Type's chunky sound was my modified Marshall EL34. The open response and barking midrange of this non-trem guitar benefited nicely from the Marshall's power and tight preamp gain structure. Both pickups were hard and bright, projecting plenty of initial thrust to go with a bright presence. With my amplifier set for maximum gain, the ST's volume knob took me from dense classic rock tones to vicious metal rhythm/lead distortion.

V-Type NTB TR Black

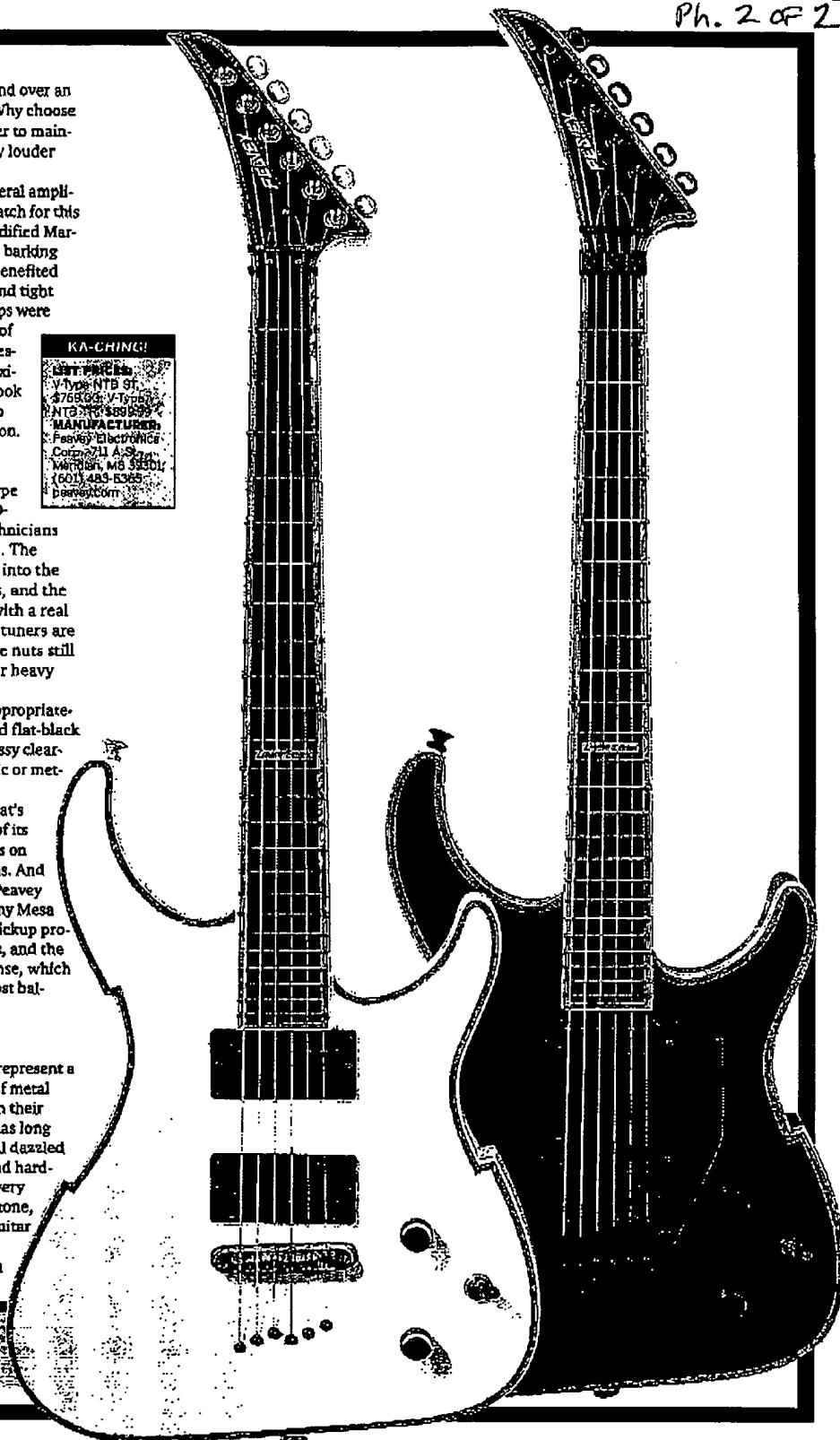
This tremolo (TR) model V-Type is a little heavier than the Tune-O-Matic version, but old-school technicians will appreciate its setup and tone. The Floyd-licensed bridge is recessed into the body and makes for easy pull-ups, and the strings are clamped to the neck with a real top-locking nut. I realize locking tuners are currently the rage, but Floyd-style nuts still provide the most stable tuning for heavy users of the whammy bar.

This guitar's dark attitude is appropriately matched by a jet-black finish and flat-black hardware. The paint and superglossy clear-coat glare like ice, and every plastic or metal part is dead black.

The tremolo provides a tone that's somewhat more muted than that of its Tune-O-Matic brother, with a focus on hammering mids and soaring highs. And as expected, this tremolo-topped Peavey hit its best notes when used with my Mesa Rectifier quarter-stack. The lead pickup produced sinister sustain and screams, and the neck hummer darkened the response, which resulted in some of the guitar's most balanced lead lines.

The Bottom Line

The V-Type EXP Series guitars represent a substantial addition to the world of metal axes, and they're among the best in their class. Although the Peavey name has long stood for quality and value, I'm still dazzled at the level of styling, cosmetics and hardware the company offers at these very reasonable prices. As for play and tone, if your description of the perfect guitar includes the words "speed" and "power," you'll find a new friend in the Peavey V-Types. ■



GUITAR WORLD 161

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